IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.779 OF 2004

Smt. Sharada Muttappa Devadiga .. Appellant

Versus

Bharat Pandurang Desai and Anr. .. Respondents

Mr.Uday Warunjikar for appellant

Mr.A.A.Kumbhakoni i/b A/M.Kulkarni for respondents

CORAM : P.V.KAKADE, J.

DATE : 22nd NOVEMBER, 2004

P.C.:

1. This is an appeal preferred by the appellant-defendant against the judgement and order dated 28.1.2003 passed by Addl. District Judge, Karad, Satara dismissing the appeal and confirming the decree and order passed by Civil Judge, Senior Division, Satara directing the defendant to hand over vacant and peaceful possession of the suit property to the plaintiff.

2. I heard the learned counsel for both sides. Perused the record.

3. The suit premises is owned by Respondent-plaintiff. One Muttappa, who was the husband of the appellant and father of defendant no.2. Muttappa accepted the suit premises on leave and licence. Muttappa was first inducted as a licensee in 1976. thereafter he executed agreement of leave and licence in favour of plaintiff on 24.8.1977. Muttappa had agreed to pay Rs.1075/= per month in lieu of use and occupation of the suit premises. He paid the licence fees upto December,1993 when it was contended that the defendants were not using the suit premises for running hotel given to them and had not paid the electricity charges. Moreover, plaintiff submitted that she was in need of suit premises and therefore, licence was terminated on 4.3.1994 and suit came to be filed thereafter.

3. The defendant resisted the suit on the ground that he was tenant in the suit premises as the agreement between the parties was not that of licence but was a

Lease and on such and other grounds, the suit was challenged and was sought to be dismissed with costs.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the agreement between the parties was licence pure and simple and it was not a Lease and therefore, the defendant was not entitled to claim tenancy rights in the suit premises. It was further held that the conditions of the licence were broken by the defendant and as such the suit came to be decreed for possession. The appeal was carried to the District Court Satara. The learned Addl. District Judge, Satara after hearing both the parties came to the conclusion that the findings recorded and the reasoning adopted by the trial court were just, proper and correct and the suit document was nothing but the licence and hence the appeal came to be dismissed with costs. Hence the present appeal.

5. At the outset it may be noted that perusal of the judgment of both the courts below clearly shows that the evidence on record is properly appreciated by both the courts. Mr. Warunjikar the learned counsel for the appellant brought to my notice the suit agreement

between the parties. I have perused the contents of the agreement and it is clear that intention of the parties was to create licence and not the Lease and therefore, the lower appellate court has rightly held that the suit agreement was in the nature of licence of which conditions were breached by the defendant and therefore, the suit was decreed. It is further transpired that the present appellant is not running the hotel in the premises as per the agreement but has given it to third party and therefore, there is clear-cut breach of the condition of the licence. It was also urged on behalf of the appellant that the appellant was running the hotel in suit premises through her agent. Be as it may, the fact remains that both the courts below have recorded the concurrent findings against the defendant, which cannot be faulted with therefore, no interference is required by this Court at all.

6. In the case of **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213** the Apex Court has held that the conditions mentioned in the Section 100 must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The concurrent

findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. Moreover in this case it is apparent that both the courts below have interpreted the document in proper and correct manner and therefore, it would brook no interference. In the result the appeal is liable to be dismissed in limine and stands dismissed in limine. Consequently the Civil application also stands dismissed with no order as to costs.

7. The learned counsel for the appellant at this stage submitted that considering the facts the appellant should be allowed some time to vacate the suit premises as per the decree of the court. Taking into consideration the relevant aspect it is hereby directed that the appellant-defendant shall vacate the suit premises within six months from the date of this order on furnishing Undertaking to this Court to that effect within two weeks from the date of this order, failing which the due course of law shall take effect.